CP-20 Commission Position Statement on Personal Assistants (Revised October 2, 2012)

Personal assistants ("assistants") are generally thought of as employees or independent contractors ("employees") that perform various functions, including clerical duties, on behalf of a licensed real estate broker ("broker"). Assistants can be grouped into two separate categories: unlicensed assistants and licensed assistants. An unlicensed assistant cannot perform the same duties that a licensed assistant can perform. A broker needs to be cognizant of these differences, along with the broker's individual supervision responsibilities to the assistant. If a "licensed" assistant's broker's license is currently on inactive or expired status, the assistant is limited to performing only those tasks that may be completed by an unlicensed assistant.

§12-61-118, C.R.S. mandates that a broker can be held liable for any unlawful act or violations of the license law committed by an employee of a broker, if the broker had actual knowledge of the unlawful act or violation or had been negligent in the supervision of such employees. Commission Rule E-29 clarifies that employees include "but are not limited to, secretaries, bookkeepers and personal assistants..." Employing brokers that employ assistants, or allow their employed brokers to employ assistants, need to include procedures on the use of licensed and/or unlicensed assistants in the office policy manual.

The license law prohibits unlicensed persons, including unlicensed assistants, from practicing real estate brokerage, which includes negotiating the sale, exchange or lease of real property on behalf of another person. An unlicensed assistant should promptly disclose to brokers, other industry professionals (i.e. loan originators, lenders, appraisers, property inspectors, etc.) and consumers that he or she is not a broker, and disclose the name of the broker for whom the assistant works. An unlicensed assistant may complete the following tasks:

- 1. Complete forms prepared for, and as directed by a broker. Unlicensed assistants cannot independently draft legal documents such as listing or sales contracts, and they cannot offer opinions, advice or interpretations of these documents.
- 2. Distribute preprinted, objective information prepared by the broker about a property listed for sale.
- 3. Perform clerical duties, including gathering information for a listing.
- 4. If authorized by the seller, provide access to property, conduct showings or open houses.
- 5. Deliver paperwork to other brokers, buyers or sellers.
- 6. Deliver paperwork that requires signatures in regard to financing documents that are prepared by lending institutions.
- 7. Prepare market analyses on behalf of the broker, if the analyses are approved and submitted by the broker to the client with a disclosure that the market analyses were prepared by the unlicensed assistant. The broker must ensure that market analyses comply with Commission Rule E-42.
- 8. Collect and receipt for earnest money deposits, security deposits or rents.
- 9. Schedule property repairs on behalf of the broker, if there is an existing agreement that authorizes the broker to make repairs to the property.

The broker should inquire as to whether any of the unlicensed assistant's activities are covered by the broker's errors and omissions insurance policy. Furthermore, licensed assistants may need their own separate errors and omissions insurance policy to cover the acts they perform on behalf of the broker.